

APPEAL OF ADMINISTRATIVE DECISION

ALPINE DEVELOPMENT, LLC





ALPINE DEVELOPMENT
ADMINISTRATIVE APPEAL



APPLICATION

- Alpine Development, LLC applied for the following:
 - 55 S. Center Street
 - C-2 Zone (less than one acre)
 - Mixed-use building along Center Street with commercial and office on main floor and full-time residence on top
 - Three short-term rentals (townhomes) in the back
 - Is a Conditional Use Permit
 - *The proposed short-term rentals have full kitchens and laundries*



55 SOUTH CENTER

MIDWAY, UTAH
OCTOBER 27, 2022

SITE PLAN

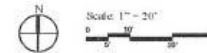
The current building is replaced with a new mixed-use building that accommodates a retail space and four residential units: one flat located on the second floor above the retail space and three townhouses located behind. A shared surface parking located at the rear serves for the retail and residential flat. Townhouses are served by their own double-car garages.

RETAIL SPACE: 1,192 s.f.

RESIDENTIAL FLAT: 1,128 s.f.
2 Bedrooms, 2 baths, balcony and terrace.
1,104 s.f. upper floor, 24 s.f. ground floor entrance.

TOWNHOUSE: 1,480 s.f. (excludes basement)
2 Bedrooms, 3 baths (excludes basement bath)
loft space, porch facing north,
second floor balconies facing south,
high ceiling over dining, basement (540 s.f.)

PARKING PROVIDED:
Townhouse garages: 6 spaces
Surface parking: 9 spaces
Total: 15 spaces



P E L • O N A
ARCHITECTS AND URBANISTS

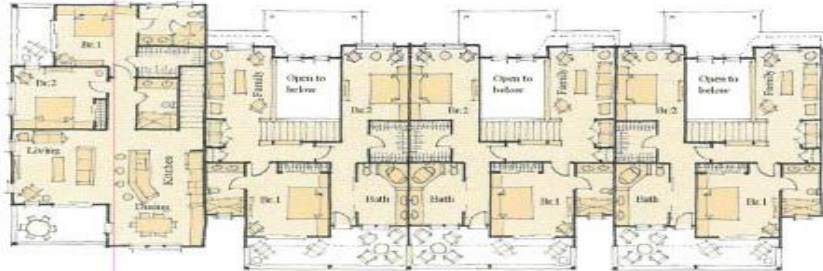
RONNIE PELUSIO, AIA, LEED AP • KORRUT ONARAN, PH.D., CNU AP

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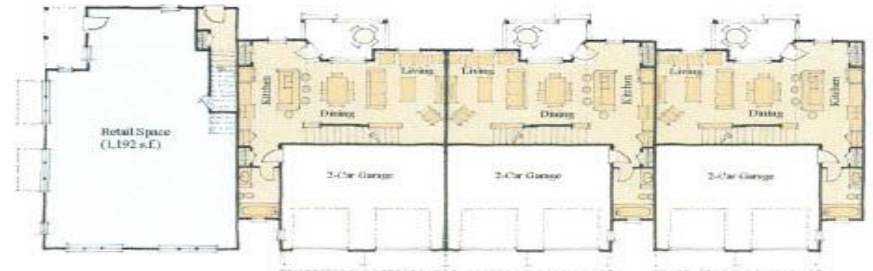
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CONCEPTUAL ARCHITECTURE



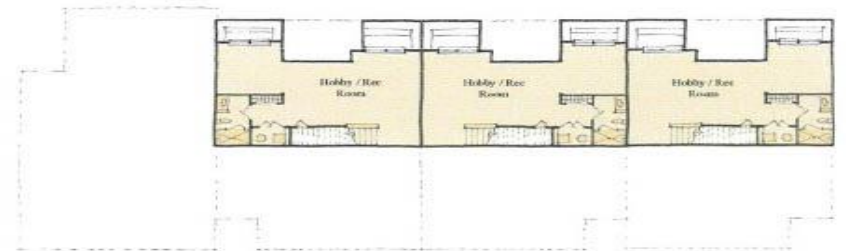
UPPER FLOOR PLAN
SCALE 1" = 16'



GROUND FLOOR PLAN
SCALE 1" = 16'



NORTH ELEVATION
SCALE 1" = 16'



BASMENT PLAN
SCALE 1" = 16'

PROCEDURAL STATUS:

- The Planning Department initially indicated it would not put the application on the Planning Commission agenda because it violated the C-2 zone, inviting the applicant to discuss the issues
- The Applicant sent a letter on December 8, 2022, entitled “Notice of Appeal Regarding Development Application” arguing the following:
 - The Planning Department has no authority to prevent an application from proceeding to the Planning Commission under Midway Code
 - The Application was vested on October 27, 2022
 - The Code in place at the time of vesting did not prohibit Kitchens in short-term rentals
 - The application for a conditional use must be approved unless no conditions can mitigate the anticipated harms



PROCEDURAL STATUS:

- The Planning Department issued a formal administrative decision on December 23, 2022, stating:
 - It does have authority under Midway City code to prevent an application from going to the Planning Commission
 - The code in place at the time of application does restrict kitchens in short-term rentals
- The Applicant replied on February 2, 2023 with a “Response to Administrative Decision” on Conditional Use Permit reiterating its previous position





Midway Code 16.26.060 Appeal Authority

- (D) The City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority.
- The standard of review by the City Council shall be de novo.
- An adverse decision by the City Council acting as appeal authority may be appealed to district court pursuant to Utah law.
- (F) Each appeal authority shall keep a written record of its appeal proceedings.

LEGAL ISSUES:

- Does the Applicant's proposal to build four residential units on one acre within the C-2 zone with full kitchens and laundry facilities violate the code?
- Does the Planning Department have the authority to stop an application from proceeding to the Planning Commission when it finds the application is incomplete or does not apply with City Code?



APPLICABLE CODE:

- Midway acknowledges that the application was submitted on Oct. 27, 2022 and that the Code in place at that time is to be used in the Appeal.
- Midway Code 16.05.030 (I)(1)(b) restricts multi-use developments to one “single-family dwelling”:

Mixed-Use Standards.

1. Lots less than one acre.

1. Frontage: 70 feet

2. One single-family dwelling (above, behind or detached)



Midway

APPLICABLE CODE:



A single-family dwelling is defined in 16.02:

“Dwelling Unit. Any building, structure or portion thereof which is **occupied as, or designed or intended for occupancy as, a residence by one or more families**, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.”

Planning Interpretation: For families to be able to live in a residence it requires full kitchens and full laundries. Under the Mixed-Use code the applicant gets **“one single family dwelling”** and no more. Thus, the three short-term rentals can proceed without kitchens and laundries.



APPLICABLE CODE:

OLD VERSION: 16.13.070 Kitchen Units in Motels and Hotels

Lot area per dwelling unit shall apply to motels and hotels for those that include kitchen facilities.

(i.e. if you are going to put a kitchen in a motel or hotel it will be counted as a single family dwelling unit and you can only put one of those per acre in the C-2 zone.)

NEW VERSION: 16.13.070 Kitchen Units In Motels And Hotels

- Kitchen and laundry facilities for individual short-term rental units (hotels, motels, Airbnb, VRBO, etc.) are not allowed in the C-2 and C-3 zones except for a residence that has been approved by the Land Use Authority as part of a mixed-use development and any dwellings that are legal nonconforming.

(i.e. if you are going to put a kitchen in a motel or hotel it will be counted as a single family dwelling unit and you can only put one of those per acre in the C-2 zone.)



STRUCTURE VS. USE:

There is no question the Applicant wants to build 4 single family dwellings on his project. This violates the restriction on “one single family dwelling” per acre in the C-2 zone.

The Applicant argues that even though he is building 4 single family dwellings, he is going to use 3 of them as short-term rentals, so he doesn't violate the code.

The problem is that once you build a home with a full kitchen and laundry facilities, a family can move in and dwell there full-time, which violates the code.

In other words, it is the structure that is prohibited, because the structure (a building without a full kitchen and laundry) makes it impossible to use the home as a single-family dwelling, and assures its use as a short-term rental.



CONCLUSION:

The Applicant can build one “single family dwelling” on the project and no more.

He can put in any number of “short-term rental” or “hotel rooms” but they cannot structurally have a kitchen or laundry.

The Administrator has Authority to Determine Violations of the City Code

- Applicant's Notice of Appeal claims, "there is no mechanism in the City Code for the Administrator to preemptively deny a conditional use application" and that "the Administrator lacked authority to deny the Application or otherwise prevent the Application from proceeding to the Planning Commission."



Midway

Zoning Administrator's Authority

- It is the Zoning Administrator's duty to administer, enforce and interpret the provisions of the Zoning Code. → 2.01.090(A)
- It shall be the duty of the Zoning Administrator to administer, enforce and interpret, when required, the provisions of this Ordinance. He or she shall enforce all the provisions of this Ordinance, entering actions in the courts when necessary; the failure to do so shall not legalize any action in violation of such provisions. 2.01.090(B)(1).



Zoning Administrator's Authority In Regards to Conditional Use Permits

- Section 16.26.120(G) states: “If the Zoning Administrator determines the conditional use is in violation of the [Land Use Code], the Administrator shall pursue the elimination of the violating activity in accordance with [the Land Use Code].”



Midway

Planning Administrator's Authority

2.01.080 City Planning Administrator

- The City Planning Administrator shall:
 1. Advise the City Council and Planning Commission regarding regulation of and requests for development and re-development and other matters as assigned by the Mayor and City Council.



Midway

Planning Administrator's Authority

- This Council has made it clear time and time again that it does not want to consider land-use applications that are incomplete or that violate the code
- It has “assigned” the Planning and Zoning Administrator with the task of assuring applications that are incomplete or non-compliant do not proceed



Administrator Determined Applicant's Proposal Would Violate the Land Use Code

- Applicant requested approval of a mixed-use building “containing commercial office space on the ground floor, a full-time residence on the top, and three short-term rental townhomes in back.” Each of the proposed “short-term rentals” contained kitchen and laundry facilities.
- **Administrator determined that the inclusion of such amenities would make the units “residences” under the Code’s definition of “dwelling unit” and disqualify them from being short-term rentals.**
- City Code only allows one residential dwelling unit in a mixed-use development less than one acre in size. → 16.05.030(I)(1)(b)

The Administrator Did His Job



Midway

Section 16.26.120: The City Council may approve and/or modify a conditional use or special exception permit application in whole or in part, with conditions, **only if all of the following findings are made:**

1. The proposed use is conditionally permitted within the Land Use Title and would not impair the integrity and character of the intended purpose of the subject zoning district **and complies with all of the applicable provisions of this Code.**

The Administrator found the application did not comply with the C-2 zone. The remedy for the Applicant is not to insist an illegal application proceeds to Planning Commission, but to appeal the Administrator's decision.

REQUEST THE ADMINISTRATIVE DECISION BE UPHELD

Findings:

1. The Zoning and Planning Administrator has authority under 2.01.090(A), 2.01.090(B)(1), Section 16.26.120(G), 2.01.080, and 16.26.120 of the Midway City Code to determine the Application did not comply with the C-2 Zone and prohibit the application from proceeding to Planning Commission.
2. The Zoning and Planning Administrator issued a timely Administrative Decision explaining his decision and indicating the Applicant could appeal.



REQUEST THE ADMINISTRATIVE DECISION BE UPHELD

Findings:

3. The Applicant timely appealed the Decision
4. The City Council, sitting as the Appeal Authority has reviewed the decision de novo, taking into account argument and evidence from both the Planning Department and the Applicant.
5. The City Council finds that the application for 3 “Short-term rental units” that contain full kitchens and laundry facilities violates section 16.05.030 (l)(1)(b)



REQUEST THE ADMINISTRATIVE DECISION BE UPHELD

Findings:

6. The City Council finds that the requested “short-term rentals” qualify as “Dwelling Units” under the code because they are “designed or intended for occupancy as a residence by one or more families” specifically because they contain full kitchens and full laundries
7. The City Council distinguishes between single family dwelling units and motel, hotel or short-term rental rooms that do not have full kitchens and full laundries and therefore are not designed for occupancy as a residence by a family.”



REQUEST THE ADMINISTRATIVE DECISION BE UPHELD

Ruling:

The application at issue does not comply with Midway City Zoning code and will not be allowed to proceed to Planning Commission until it can show compliance with the code.

